or was not such a crime as forgery known to the criminal law. It was only material for him to show that the altered paper was fraudulently used by the defendants as a means to obtain from him a change in the contract. Whether the alteration had been innocently or feloniously made, was of no direct importance. The material question in issue was this: Did the defendants fraudulently obtain from the plaintiff the modification of the contract as subsequently agreed to by him?

This case comes within the principle decided in the case of *Strader* v. *Mulvane et al.*, 17 Ohio St. 624. There was no error in the refusal to charge, or the charge as given by the Court of Common Pleas. Motion overruled.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF ILLINOIS.[2]
SUPREME COURT COMMISSION OF OHIO.[3]

ADMIRALTY. See *Collision.*

Cross-libel.—Where, in a suit in admiralty, a cross-libel and answer have been filed and a decree entered dismissing the cross-libel, such a decree, if not appealed from, is conclusive that the libellant in the cross-suit is not entitled to recover affirmative damages for any injuries received by his own vessel, but it does not preclude him from showing in the original suit, if he can, that a collision was the result of inevitable accident, or that it was occasioned by the negligence of those in charge of the other vessel, or that it was a case of mutual fault, where the damages should be divided: *Pitts, Executor, &c.*, v. *River & Lake Shore Steamboat Line,* S. C. U. S., Oct. Term 1875.

AGENT.

Notice to, or knowledge by, an agent or a sub-agent is notice to, or knowledge by, the principal, but to make it so the notice or knowledge must come in the course of the principal's business, or from a prior transaction then present to the agent's mind, and which could be properly communicated to the principal: *Hoover* v. *Wise,* S. C. U. S., Oct. Term 1875.

But notice or knowledge on the part of an agent of an intermediate employer will not affect the principal: *Id.*

W., residing in New York and having a claim against a debtor in Ne-

[1] Prepared expressly for the American Law Register, from the original opinions. The cases will probably be reported in 1 or 2 Otto.

[2] From Hon. N. L. Freeman, Reporter; to appear in 77 Illinois Reports.

[3] From E. L. De Witt, Esq., Reporter; to appear in 27 Ohio St. Reports.

braska, put it in the hands of a collection agency, who sent it to an attorney in Nebraska. This attorney, with knowledge of the debtor's insolvency, accepted a confession of judgment from him, collected the money and remitted it to the collection agency. The debtor being adjudicated a bankrupt within four months, his assignee brought suit against W. to recover back the money. *Held* (three judges dissenting), that the attorney was not the agent of W., and the former's knowledge was not chargeable to the latter: *Id.*

Whether a different result would have been reached if the money had been paid over to W., not decided: *Id.*

BANKERS. See *Broker.*

BANKRUPTCY.

Effect of an Adjudication of Bankruptcy upon a Suit for the Foreclosure of a Mortgage.—Where a suit to foreclose a mortgage was instituted in a state court, which proceeded to a decree and sale, and the plaintiffs became the purchasers, receiving the master's deed for the premises, which was duly confirmed by the court, and pending these proceedings the mortgagor was adjudicated a bankrupt and an assignee appointed, but not made a party to the suit on the mortgage. *Held*, that there was no provision in the Bankrupt Act which would prevent the court from proceeding with the case or which would affect the title of the purchaser under the decree: *Eyster* v. *Gaff et al.*, S. C. U. S., Oct. Term 1875.

The debtor of a bankrupt, or one who contests with him the right to real or personal property, loses none of his rights by the bankruptcy of his adversary. The same courts still remain open to him, and in the classes of cases where the Bankrupt Act has conferred a jurisdiction on the federal courts for the benefit of the assignee, it is concurrent with, and does not divest that of the state courts: *Id.*

BROKER.

Taxation of Bankers and Brokers.—Plaintiffs were bankers and paid their tax as such. They also bought and sold gold and stocks for others, and on their own account. The collector of internal revenue assessed an additional tax upon them, as brokers, for all their sales of this kind, as well those on their own account as those for others. *Held*, that the assessment was proper: *Warren* v. *Shook*, S. C. U. S., Oct. Term 1875.

COLLISION. See *Admiralty.*

Duty of Vessels under Steam.—Two ships under steam, if they are meeting end on, or nearly end on, so as to involve risk of collision, are required to put their helms to port, so that each may pass on the port side of the other, but if they neglect to comply with that requirement until it is so late that the object to be accomplished cannot be effected, it is no defence to allege or prove that one or both ported their helms before the collision occurred, for unless a party seasonably complies with the requirement, the act of compliance is without substantial merit: *Ferryboat, &c.*, v. *Railroad Transportation Co.*, S. C. U. S., Oct. Term 1875.

Sailing rules were ordained to prevent collisions between ships em-

ployed in navigation, and to preserve life and property embarked in that perilous pursuit, and not to enable those whose duty it is to adopt, if possible, the necessary precautions to avaid such a disaster, to determine how little they can do in that direction without becoming responsible for its consequences in case it occurs: *Id.*

The rule, that where both vessels are in fault the damages should be divided between them, ought not to be extended so far as to inflict positive loss on innocent parties: *Coastwise Co.* v. *De las Casas; De las Casas* v. *Steamer Alabama et al.*, S. C. U. S., Oct. Term 1875.

Effect of Maritime Usage.—Usages called sea laws, having the effect of obligatory regulations, to prevent collisions between ships engaged in navigation, existed long before there was any legislation upon the subject, either in this country or in the country from which our judicial system was largely borrowed: *Steamship City of Washington, &c.*, v. *Baillie et al.*, S. C. U. S., Oct. Term 1875.

Sailing rules and other regulations have since been enacted, and it is everywhere admitted that such rules and regulations, in cases where they apply, furnish the paramount rule of decision; but it is well known that questions often arise in such litigations outside of the scope and operation of the legislative enactments. Safe guides in such cases are often found in the decisions of the courts, or in the views of standard text-writers, but it is competent for the court in such a case to admit evidence of usage, and if it be proved that the matter is regulated by a general usage, such evidence may furnish a safe guide as the proper rule of decision: *Id.*

Mast-head lights should be displayed by pilot vessels. Lights of the kind are required as one of many precautions which prudent navigators are expected to provide, but it would be unreasonable to hold that the owners of a pilot vessel should be adjudged liable for the consequences of a collision by reason of not having a mast-head light, where it appeared beyond all doubt that she constantly showed flash-lights, which were seasonably seen by the other vessel, and that the absence of the mast-head light had nothing to do with the collision: *Id.*

Constitutional Law.

Power of Congress to protect Constitutional Rights.—Rights and immunities created by or dependent upon the Constitution of the United States, can be protected by Congress. The form and the manner of the protection may be such as Congress, in the legitimate exercise of its legislative discretion, shall provide. These may be varied to meet the necessities of the particular right to be protected: *United States* v. *Reese et al.*, S. C. U. S., Oct. Term 1875.

If Congress has not declared an act done within a state to be a crime against the United States, the courts have no power to treat it as such: *Id.*

The fifteenth amendment to the Constitution of the United States has invested the citizens with a new constitutional right which is within the protecting power of Congress. That right is exemption from discrimination in the exercise of the elective franchise, on account of race, color or previous condition of servitude: *Id.*

The Act of May 31st 1870, commonly called the Enforcement Act, is not in pursuance of this amendment, and Congress has not as yet pro-

vided by appropriate legislation for the punishment of a violation of the provisions of this amendment. CLIFFORD and HUNT, JJ., dissenting: *Id.*

Power of Congress over Right to petition for Redress of Grievances.—The first amendment of the Constitution prohibits Congress from abridging "the rights of the people to assemble and to petition the government for a redress of grievances." This, like the other amendments proposed and adopted at the same time, was not intended to limit the powers of the state governments in respect to their own citizens, but to operate upon the national government alone: *United States* v. *Cruikshank et al.*, S. C. U. S., Oct. Term 1875; affirming *U. S.* v. *Cruikshank*, 13 Am. Law Reg. N. S. 630.

The particular amendment now under consideration assumes the existence of the right of the people to assemble for lawful purposes, and protects it against encroachment by Congress. The right was not created by the amendment; neither was its continuance guaranteed, except as against Congressional interference. For their protection in its enjoyment, therefore, the people must look to the states. There is where the power for that purpose was originally placed, and it has never been surrendered to the United States: *Id.*

It is no more the duty or within the power of the United States to punish for a conspiracy to falsely imprison or murder within a state than it would be to punish for false imprisonment or murder itself. CLIFFORD, J., dissenting: *Id.*

Due Process of Law.—A statute of Louisiana prescribed that a commission should be *primâ facie* proof of right to judicial office, and if any incumbent refused to vacate and turn over the office to the person bearing such commission, he should be cited by rule returnable within twenty-four hours to present his claim for adjudication before a court, which should hear the case without a jury, and its determination should be final unless appealed from within one day. The appeal if taken was to be returnable to the Supreme Court within two days, and to have precedence over all other business. *Held*, that a competent tribunal and mode of proceeding were provided, which, though speedy, were "due process of law:" *Kennard* v. *State of Louisiana*, S. C. U. S., Oct. Term 1875.

Interference with Vested Estates—Changing Fee-tail to Fee-simple by Statute.—In the Act of December 17th 1811, "to restrict the entailment of estates" (S. & C. 550), the clause which provides "that all estates given in tail shall be and remain an absolute estate in fee-simple to the issue of the first donee in tail," was intended to limit entailments then subsisting, as well as those which might be thereafter created, and the enactment, thus construed, was not a prejudicial interference with vested rights, nor beyond legitimate legislative power: *Pollock et al.* v. *Speidel*, 27 Ohio St.

Therefore, where an estate in tail was created by deed, in 1807, and the issue of the first donee in tail sold and conveyed the premises in fee-simple, in 1836, by deed with covenants of general warranty, both he and his heirs were thereby for ever estopped to claim title to the premises against the grantee of such issue or his assigns: *Id.*

Multiplicity of Suits—Jurisdiction of Federal Courts to enjoin Proceedings in State Courts.—Celia Groves, of Madison, La., by her will

devised a plantation to plaintiffs, and appointed Carpenter her executor and general devisee. Plaintiffs filed a bill within a few months after death of testatrix, against Carpenter, alleging incompetency and waste of the estate, and also against one Dennis, who had sued Carpenter in the state court, claiming to have been a partner of testatrix; against one Stout and others who claimed to be testatrix's heirs and had sued in the state court to set aside the devise to plaintiffs as void; and against Groves and others, heirs of testatrix's former husband, who had sued in the state court, claiming that the property never belonged to testatrix, but to her husband. *Held*, that the bill was bad on demurrer, first, because there was no such multiplicity of suits as would justify the interference of chancery, the suits recited being by separate parties and for separate and distinct causes of action; and second, because the principal relief sought was an injunction against proceedings in a state court, a thing the federal courts are expressly forbidden to do: *Haines et al., Trustees of Vicksburg Baptist Church*, v. *Carpenter et al.*, S. C. U. S., Oct. Term 1875.

CONTRACT.

Construction of Contract—Conditional Subscription to Stock.—The Odorless Rubber Co. being embarrassed, passed a resolution that whereas its stock was impaired to the extent of 30 per cent., therefore, that stock to the amount of $72,000 (being 30 per cent. of the capital) should be called in and cancelled, and new subscription obtained for new stock. After the passage of this resolution, defendant signed a subscription paper for new stock, which after setting forth the number of shares subscribed for, terms of payment, &c., contained this provision, "it being understood that none of said subscriptions shall be obligatory until at least the amount of $118,000 of stock shall have been subscribed, and that 30 per cent. deduction is made on the old stock of this company, as per vote of stockholders June 10th 1872." *Held*, that the reduction of 30 per cent. was a condition of the subscription and not a mere repre, sentation of a state of facts supposed to exist at the time: *Baker et al. Assignees of Odorless Rubber Co.*, v. *White*, S. C. U. S., Oct. Term 1875.

CORPORATION. See *Contract; Stock.*

Liability of Stockholder to Assessments.—The transferee of stock on which only a part of its nominal value has been paid, is liable to calls for the unpaid portion made during his ownership without any proof of an express promise by him to pay: *Webster* v. *Upton, Assignee*, S. C. U. S., Oct. Term 1875.

And although his certificate issued by the company was marked "non-assessable," this is no defence to an action by an assignee of the company after it has become insolvent. As against creditors, the company has no power to release or contract against the payment of such calls: *Id.*

Estoppel to deny Corporate Existence.—A stockholder of a banking corporation which is a corporation *de facto*, who participates in its transactions and receives dividends, will, by such acts, be estopped to insist when sued by its creditors that the corporation was not legal. Whether the bank has been regularly organized or not, is not a defence that can be availed of by a stockholder as against a *bonâ fide* creditor, if it appears there was a corporation *de facto*: *Wheelock* v. *Kost*, 77 Ill.

Dealing with Directors.—A director or stockholder of a private corporation may trade with, borrow from or lend money to the company of which he is a member, on the same terms and in like manner as other persons; but where a director lends money to his corporation taking a deed of trust to secure the same, he must act fairly, and be free from all fraud and oppression; and where that is the case, the security may be enforced the same as if given in favor of any other person: *Harts* v. *Brown*, 77 Ill.

COVENANT. See *Constitutional Law.*

Performance—Time.—Where a builder has done a large and valuable part of the work, but yet has failed to complete the whole or any specific part of the building or structure within the time limited by his covenant, the other party has the option when that time arrives of abandoning the contract for such failure, or of permitting the party in default to go on, and if he does the latter, either expressly or by standing by while the other goes on, he cannot afterwards set up the breach as a defence to an action for the contract price: *Construction Co.* v. *Seymour et al.*, S. C. U. S., Oct. Term 1875.

For the injury done by the failure to perform in the stipulated time, he may recover in a suit on the contract, or he may recoup, in an action on the contract against him, for the price: *Id.*

In an action of covenant founded solely on a specialty, evidence of a parol promise is inadmissible: *Id.*

DAMAGES. See *Waters, &c.*

Exemplary—Gross Negligence—Railroad.—It is settled that there may be exemplary or punitive damages in tort, but only where the injury is the result of wilful misconduct, or that entire want of care which would raise a presumption of conscious indifference to consequences: *Milwaukee & St. Paul Railroad Co.* v. *Arms*, S. C. U. S., Oct. Term 1875.

The mere fact of a collision between two railroad trains, not moving with extraordinary speed and not producing a general destruction of either train, while it is evidence of negligence for the recovery of compensatory damages by a person injured, will not support a verdict for exemplary damages: *Id.*

EQUITY.

Practice under Code—Right to Jury.—In a civil action, where the facts stated in the petition, and the nature of the relief primarily demanded, are within the sole jurisdiction of a court of equity, neither party can, of right, demand that the issue of fact made by the pleadings touching the plaintiff's right to such relief, shall be tried by a jury; and, therefore, after final judgment, adverse to the plaintiff, in the Court of Common Pleas, he may appeal such a case to the District Court: *Rowland* v. *Entrekin et al.*, 27 Ohio St.

And this right of appeal is not affected by the fact that the plaintiff also demands a money judgment, by way of damages to which he may incidentally be entitled, as a result of his obtaining the equitable relief sought: *Id.*

Aiding a Fraud.—Plaintiff having a balance of $19,000 in bank on

the day before property was to be listed for state taxation, drew it out in United States notes, placed them in a package and deposited them in the vault of the bank. A few days after the listing, he took out the package and redeposited the notes to his credit. In his return of taxable property he made no mention of these notes, but the assessors added the amount of them to his return, whereupon he filed a bill to restrain the collection of the tax on this amount, on the ground that being in United States notes it was not taxable for state purposes. The Supreme Court of Kansas dismissed the bill on the ground that the plaintiff's action was a fraud on the state which a court of equity would not assist. (See the opinion in full, 11 Am. Law Reg. N. S. 626.) *Held*, that the decision was correct: *Mitchell* v. *Commissioners of Leavenworth*, S. C. U. S., Oct. Term 1875.

ERROR. See *Practice; Writ of Error.*

Practice—Allowing Bill of Exceptions after Term.—A case was submitted to the court without a jury, and the judge made a general finding for the plaintiff; a motion by defendant for a new trial was continued till the next term, when it was overruled and judgment entered for plaintiff. A writ of error was then taken out, and at the next term a bill of exceptions was sealed for defendant without any extension of time being asked or allowed, and without any consent being asked or given by plaintiff; the bill, however, was regular in form and showed that the exceptions were taken at the trial. *Held*, that the bill was a nullity. In *United States* v. *Breitling*, 20 How. 253, a bill was sealed after the term, but under circumstances from which consent of the opposing counsel might be presumed. Under ordinary circumstances the power of a judge to seal or allow a bill of exceptions ends with the term at which the trial is had, unless there is an express order of the court extending the time or the opposite party consents: *Muller et al.* v. *Ehlers*, S. C. U. S., Oct. Term 1875.

Practice—Final Judgment.—An order of the circuit court reversing a judgment of the district court, where the case shows that the order if formally and fully drawn up would only be to set aside a verdict and judgment, and award a new trial for misdirection on the law, is not a final judgment on which a writ of error will lie: *Baker et al.* v. *White*, S. C. U. S., Oct. Term 1875.

Practice—Power of reviewing Court over the Record—New Trial.—A reviewing court on error has no control of the records of the court below, and cannot, therefore, make any correction or change therein, but such corrections or changes must be sought in the court where the record is made: *Smith et al.* v. *Board of Education*, 27 Ohio St.

A reviewing court may, however, disregard any matter purporting to be part of the record, which is not legitimately and properly matter of record: *Id.*

What shall constitute the record of a case, is regulated by statute, and any paper the statute authorizes to become part of the record may be made part thereof, without an express order of the court to that effect: *Id.*

When a motion for a new trial is granted by the court in which it is made, the judgment rendered on the new trial will not be reversed for error in allowing such new trial: *Id.*

ESTATE TAIL. See *Constitutional Law.*

EVIDENCE. See *Malicious Prosecution.*

Parol Testimony to Reform written Instrument—Mistake.—Clear and convincing proof is required to warrant the reformation of a written instrument on the ground of mistake, and when it clearly appears that this rule has been disregarded in reforming an instrument, and the finding of the court can be sustained only upon the supposition that it regarded the law as requiring nothing more than a mere preponderance of evidence to warrant a finding sustaining the alleged mistake, a reviewing court, on error, may reverse the judgment based on such finding: *Potter* v. *Potter's Executrix*, 27 Ohio St.

Order of Receiving.—Where evidence was offered by the plaintiffs, tending to show statements and admissions, purporting to have been made by A. in relation to the employment of the plaintiffs by the defendants, as architects, it was competent for the court to admit such evidence, subject to the condition that the plaintiffs should subsequently prove that A., who made the declarations, was the agent of the defendants: *The First Unitarian Society* v. *Faulkner et al.*, S. C. U. S., Oct. Term 1875.

Where no such evidence was afterwards introduced by the plaintiffs, but the bill of exceptions of the defendants showed that the attention of the court was not again called to the subject, it was not competent for the defendants to remain silent and suffer an error to be committed by the court, in order that they might have a valid exception, if the verdict was in favor of the plaintiffs: *Id.*

INSURANCE.

Compliance with condition of Policy.—The insured had bought the goods insured of one F. They were left in the store of H. & Co., auctioneers, at the time of the purchase, and were left there for sale by and under the direction of V., the purchaser. It was agreed by him that the first proceeds of the sale should be paid to the vendor, to the amount of $3150, and if the auctioneers advanced money upon the stock they were authorized to retain the possession and control of the goods as their security. There was no evidence, however, or claim that any such advance was made. In a suit on the policy, defence was made on the ground of a violation of that condition of the policy which provides, that "if the interest of the assured in the property is not absolute, it must be so expressed in the policy, otherwise the insurance shall be void," and of a mis-statement in answering that there was no encumbrance on the property insured. *Held*, that the interest of the insured was absolute, and that he was entitled to recover: *Fire Ins. Co.* v. *Vaughan*, S. C. U. S., Oct. Term 1875.

Over-valuation.—An over-valuation of property by the insured, with a view and purpose of obtaining insurance thereon for a greater sum than could otherwise be obtained, is a fraud upon the insurance company that avoids the policy: *Id.*

It is a question, however, of good faith and honest intention on the part of the insured, and though he may have put a value on his property greatly in excess of its cash value in the market, yet if he did so in the

honest belief that the property was worth the valuation put upon it, and the excessive valuation was made in good faith, and not intended to mislead or defraud the insurance company, then such over-valuation is not a fraudulent over-valuation that will defeat a recovery: *Id.*

INTERNAL REVENUE. See *Broker.*

JURISDICTION. See *Bankruptcy; Constitutional Law.*

Supreme Court of the United States.—Where the question before the Supreme Court of the United States is the effect, under the general public law, of a state of sectional civil war upon a contract of life insurance, the court has no jurisdiction, as no federal question is presented for determination: *The New York Life Ins. Co.* v. *Hendren*, S. C. U. S., Oct. Term 1875.

LANDLORD AND TENANT.

Landlord's Lien.—A purchaser of grain raised by a tenant, upon which the landlord has a lien for rent, with knowledge of that fact and that the rent is not fully paid, will be liable to the landlord for the rent due, to the extent of the value of the grain purchased by him: *Prettyman* v. *Unland*, 77 Ill.

MALICIOUS PROSECUTION.

Evidence—Change of Law—Retroactive Statute.—In an action for malicious prosecution founded on a criminal proceeding before a magistrate, and when the issue involves malice and probable cause, it must be tried by direct and competent evidence to the jury. And it is error on such issue to permit witnesses to rehearse the testimony given before the magistrate by witnesses other than the defendants: *John* v. *Bridgman and Wife*, 27 Ohio St.

But it is competent to prove by any competent witness who was present, and heard the testimony, that no evidence in support of the criminal charge was offered or given by the defendant. *Richards* v. *Foulke*, 3 Ohio 52, distinguished and followed: *Id.*

In such trial the record of the magistrate is competent evidence, at least to show the facts of the acquittal and discharge of the plaintiffs: *Id.*

When at the time the action was brought, a witness would have been incompetent, but an amendatory law in force at the time of the trial makes him competent, the law in force at the time of the trial governs the question. The unpublished case, 25 Ohio St. 500, decides this. Nor in such law so applied liable to the objection of being retroactive within the prohibition of the Constitution of 1851: *Id.*

MANDAMUS. See *Municipal Bonds.*

MARRIED WOMAN.

Separate Estate—Land bought and improved by Wife with Money acquired before Marriage and with separate Earnings—Acquiescence of Husband.—A., a married woman, purchased land with money which had been given to her previously to her marriage by her father. The buildings erected thereon were constructed partly with such money and partly with her subsequent earnings. At the time of her marriage, the

common law governed in the District of Columbia, where she lived, as to the rights of married women to the personal property possessed by them previously to their marriage, and as to their subsequent earnings. By that law the money which the wife then possessed and her subsequent earnings belonged exclusively to her husband. A.'s husband having acquiesced for fifteen years in her holding the land in her own name and in making improvements thereon with her earnings: *Held*, that in a controversy between the parties after a divorce, this was evidence of his original authorization of the investments, constituting a voluntary settlement upon his wife, and that therefore the property belonged to A.: *Jackson* v. *Jackson*, S. C. U. S., Oct. Term 1875.

MASTER AND SERVANT.

Negligence—Liability of Master for.—Where a brakeman of a railway company is injured while in the service of the company, in consequence of a defective ladder, which giving way, caused him to fall, the company will not be liable to such servant, unless it had notice of the defect, or might have had such knowledge by the exercise of a proper degree of diligence and care: *Toledo, Wabash & Western Railway Co.* v. *Ingraham*, 77 Ill.

MISTAKE. See *Evidence.*

MORTGAGE. See *Bankruptcy.*

MUNICIPAL BONDS.

Regularity of Proceedings cannot be inquired into against a bonâ fide holder—Mandamus.—Where specific power is given by the legislature authorizing a board of education to issue negotiable bonds for school purposes upon certain conditions prescribed, the regularity of the proceedings of the board cannot be disputed, where the bonds, upon their face, purport to have been issued under the law in question, and where they have been sold by the board and afterward passed into the hands of a *bonâ fide* holder: *The State ex rel. Robertson* v. *Board of Education*, 27 Ohio St.

Mandamus is the proper remedy to compel the board to appropriate moneys already in their treasury for that purpose, towards the payment of such bonds, and to levy such tax as may be necessary to complete such payment: *Id.*

MUNICIPAL CORPORATION.

Municipal Subscriptions and Bonds.—If the people of a county vote a subscription in aid of a railway company to be paid in bonds of the county upon certain conditions precedent, the county authorities cannot delegate power to others to determine when the conditions are performed, but must determine that fact themselves, as the authorized agents of the people. This is an official trust, which cannot be delegated: *Supervisors of Jackson County* v. *Brush*, 77 Ill.

License of Vehicles.—A provision in a city charter gave the power "to license, tax and regulate and control wagons and other vehicles conveying loads in the city; to prescribe the width and tire of the same, the weight of loads to be carried and the rates of carriages." *Held*, not to apply to the case of wagons used by the defendant in the regular course of his business as a merchant, but only extends to wagons of common carriers for hire: *Joyce* v. *East St. Louis*, 77 Ill.

NATIONAL BANKS.

Who liable as Stockholders.—Primarily, a creditor of a national bank may proceed against the party in whom the legal title to the stock is vested. Where shares of stock in a banking corporation have been hypothecated, and placed in the hands of the transferee, he will be subjected to all the liabilities of ordinary owners, for the reason that the property is in his name, and the legal ownership appears to be in him: *Wheelock* v. *Kost*, 77 Ill.

NEGLIGENCE. See *Master and Servant.*

NOTICE. See *Agent.*

OFFICER.

Payment for Services.—A person accepting a public office with a fixed salary is bound to perform the duties of the office for the salary. He cannot legally claim additional compensation for the discharge of those duties, even though subsequently imposed by statute or ordinance. And a promise to pay an officer an extra sum beyond that fixed by law, is not binding, though he renders services and exercises a degree of diligence greater than could legally have been required of him: *City of Decatur* v. *Vermillion*, 77 Ill.

PRACTICE. See *Error.*

Assignments of Error.—The object of the rule requiring an assignment of errors is to enable the court and opposing counsel to see on what points a reversal of judgment is to be asked, and to limit the discussion to such points. The practice of unlimited assignments covering the whole case and compelling the court to sift out for itself the points really relied on, is a perversion of the rule, and the court will only notice such as seem to it material: *Phillips Construction Co.* v. *Seymour et al.*, S. C. U. S., Oct. Term 1875.

PUBLIC USE.

Dedication to.—Where the plat of a village showed a square, not divided into lots as the other blocks, with no designation of its use, and the proof showed the sale of lots around the same at an enhanced price, and an intention to dedicate the square to public use, and a long acquiescence in the use of the same as a public park, this was *held*, to be a dedication at common law to the public use: *Village of Princeville* v. *Auten*, 77 Ill.

RECORD. See *Error.*

SALE.

When Delivery to pass Title.—To affect subsequent purchasers without notice, and creditors, there must be an actual delivery of personal property, to consummate a sale; but the rule has its exceptions, in the case of warehouse receipts: as where a warehouseman purchased grain stored by him, for another person, and with such other person's money, and took up his outstanding receipt, held by the vendor, and issued a new receipt to the person for whom he bought, it was *held* that the grain was not liable thereafter to be taken in execution against the warehouseman: *Broadwell* v. *Howard*, 77 Ills.

SET-OFF.

When allowed—Debts owing by and to an insolvent Corporation.—The debts which may be set-off against each other must be in the same

right, and this rule is the same at law and in equity: *Scammon* v. *Kimball, Assignee of Mutual Security Insurance Co.*, S. C. U. S., Oct. Term 1875.

Where an insurance company which has become insolvent has money on deposit with a banker, the latter may set-off against the company's assignee in bankruptcy, his claims under policies of the company for losses on properties destroyed by fire: *Id.*

But he cannot set-off his claims under such policies against his notes for subscriptions to stock of the company. The stock and money due from its sale constitute assets in trust for payment of the company's debts, and the rights of creditors are superior to those of a stockholder, although the latter be also a creditor: *Id.*

In the ordinary course of business, funds deposited with a banker become his property and constitute an ordinary debt payable on demand in instalments at the depositor's option, and the subject of set-off, but *semble* if they were deposited with him as treasurer of a corporation the funds would be held upon a trust and not subject to set-off: *Id.*

Sheriff's Sale.

Grounds for setting aside.—Where a plaintiff in execution, through his attorneys, bids in a tract of land turned out by the defendant in the execution, in satisfaction of the execution, in consequence of the misrepresentations of the sheriff making the levy and sale, that the same was not encumbered, when, in fact, it was encumbered in excess of its value, this will afford no ground for setting aside the sale and satisfaction, as the sheriff is not the agent of the defendant: *Vanscoyoc* v. *Kimler*, 77 Ill.

Stock. See *Contract; Corporations.*

Unpaid—Liability of Owner.—Unpaid stock is as much a part of the assets of an insurance company as the cash which has been paid in upon it. Creditors have the same right to look to it as to anything else, and the same right to insist upon its payment as upon the payment of any other debt due to the company. As regards creditors there is no distinction between such a demand and any other asset which may form a part of the property and effects of the corporation: *Sanger* v. *Upton, Assignee, &c.; Upton, Assignee* v. *Tribilcock*, S. C. U. S., Oct. Term 1875.

A fraudulent representation by an agent of the corporation at the time he obtained a subscription to the stock, that only 20 per cent. of the par value was assessable, is no defence to an action by the corporation or its assignee in bankruptcy for the unpaid instalments. A party has no right to rely on a representation that is contrary to law: *Id.*

Trustee.

Compensation of.—At common law, in the absence of contract, a trustee is entitled to no compensation for the management of the trust property. He may impose terms as the condition of his acceptance of the trust, and the person creating the trust may accede to the same or not as he chooses. Where the trust is accepted without agreement as to compensation, the trustee may charge for all reasonable and proper expenses incurred in caring for and preserving the trust property or fund: *Huggins* v. *Rider*, 77 Ills.

WAR.

Effect of Honorable Discharge—Meaning of "Allowances."—An honorable discharge of a soldier from service does not restore to him pay and allowances forfeited for desertion: *United States* v. *Landers*, S. C. U. S., Oct. Term 1875.

Under the term "allowances" bounty is included: *Id.*

Effect of a state of War upon Commercial Intercourse.—As a general rule one of the immediate consequences of a declaration of war and the effect of a state of war, even when not declared, is that all commercial intercourse and dealing between the subjects or adherents of the contending powers is unlawful, and is interdicted. In the United States, however, licences to carry on trade, especially in the case of a civil war which is sectional, may be issued under the authority of an Act of Congress, and in special cases for purposes immediately connected with the prosecution of the war, they may be granted by the authority of the President, as commander-in-chief of the military and naval forces of the United States: *Matthews* v. *McStea*, S. C. U. S., Oct. Term 1875.

Both the Act of Congress of July 13th 1861, and the proclamation of the President of August 16th 1861, exhibit a clear implication that before the first was enacted, and the second was issued, commercial intercourse was not unlawful, and that it had been permitted: *Id.*

Where a bill of exchange, dated April 23d 1861, and made payable in one year, was drawn on a firm in New Orleans and accepted by them on the day of its date, and A., one of the defendants, and a member of the firm, was a resident of the State of New York, it was *held*, that the partnership was not dissolved by the war of the rebellion prior to April 23d 1861, and that therefore A. was liable: *Id.*

WARRANTY. See *Constitutional Law.*

WATERS AND WATER-COURSES.

Municipal Corporation—Damages.—If a city in fixing the grade of a street, or in afterwards changing it, causes water to flow upon a lot that it did not naturally flow upon, the city will be held liable therefor: *City of Bloomington* v. *Brokaw*, 77 Ills.

WRIT OF ERROR.

From the Supreme Court of the United States to a State Court—To what Court directed—Transmission of Record.—If the highest court of a state has, after judgment, sent its record and judgment in accordance with the law of the state to an inferior court for safe keeping, and no longer has them in its own possession, the Supreme Court of the United States may send its writ either to the highest court or to the inferior court. If the highest court can and will, in obedience to the requirement of the writ, procure a return of the record and judgment from the inferior court, and send them up, no writ need go to the inferior court. But if it fails to do this, the Supreme Court of the United States may send direct to the court having the record in its custody and under its control: *Atherton et al.* v. *Fowler et al.*, S. C. U. S., Oct. Term 1875.